



Republic & 2 others v Attorney General & 2 others; Darson Trading Company Limited & another (Interested Parties) (Judicial Review Miscellaneous Application E065 of 2025) [2025] KEHC 8498 (KLR) (Judicial Review) (17 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8498 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW MISCELLANEOUS APPLICATION E065 OF 2025

RE ABURILI, J

JUNE 17, 2025

FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION

AND

IN THE MATTER OF: ARTICLES 40 AS READ TOGETHER WITH ARTICLES 20,21, 22, 23, 43, 47, 48 AND 159 OF THE CONSTITUTION

AND

IN THE MATTER OF: SECTIONS 7 AND 8 OF THE LAW REFORM ACT

AND

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT, AND ORDER 53 OF THE CIVIL PROCEDURE RULES

BETWEEN

REPUBLIC APPLICANT

AND

MOSES MWAI 1ST EX PARTE APPLICANT

RACHAEL NYAMBURA MUNGAI 2ND EX PARTE APPLICANT

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

NATIONAL TRANSPORT AND SAFETY AUTHORITY 3RD RESPONDENT

AND



DARSON TRADING COMPANY LIMITED INTERESTED PARTY

VICTOR ODUOR NYAWANDA INTERESTED PARTY

RULING

1. The ex parte applicants by their Chamber Summons dated 13th June 2025 brought under Order 53 Rule 1 (3) of the Civil Procedure Rules seek leave of the Court to apply for orders of certiorari, prohibition, and mandamus in relation to the impounding of a motor vehicle registration number KDQ 147E Honda Vezel Station Wagon which the 1st applicant owned and sold to the 2nd applicant and even transferred to her through the NTSA, the 3rd respondent herein. The motor vehicle registration number KDQ 147E Honda Vezel Station Wagon, was impounded by the officers from the Directorate of Criminal Investigations (DCI) on 4th June 2025 while it was being driven by the 2nd applicant, allegedly, on account that there is a debt owed to the 1st interested party by the 2nd interested party. The 2nd interested party is the one who sold the subject motor vehicle to the 1st applicant herein.
2. The applicants contend that the 2nd applicant is the registered owner of the motor vehicle in question and that its impounding by the DCI was without lawful basis.
3. The applicants aver that the DCI acted illegally, in bad faith, ultra vires, arbitrarily and denied the 2nd applicant legitimate expectation of the right to her property as guaranteed under Article 40 of *the Constitution*, since no criminal offence was disclosed or alleged and that the matter appears to be civil in nature, relating to a debt recovery claim, which the DCI has no mandate to collect on behalf of the 1st interested party.
4. The applicants therefore seek that: an order of certiorari be issued to quash the impounding decision; an order of mandamus be issued compelling the release of the vehicle to the 2nd applicant; and that an order of prohibition be issued to restrain the respondents from releasing, changing particulars of ownership, transferring, damaging, tampering with the mechanical condition, repairing, spraying, or in any other way interfering with the subject motor vehicle.
5. The applicants also seek leave for a declaration that the 2nd respondent's action of impounding of the said motor vehicle is ultra vires, unlawful, Wednesbury unreasonable, unfair, manifestly unjust and in blatant disregard of the Rules of natural justice.
6. The applicants further pray that the leave granted do operate as stay of the intended sale or tampering with the vehicle by way of change of ownership, transferring, damaging, tampering with the mechanical condition, repairing.
7. The application was heard ex parte with Mr. Kalwa advocate making oral submissions on behalf of the applicants, reiterating the averments and depositions by the 1st applicant in his affidavit sworn on 13th June, 2025 on behalf of and authority signed and filed by the 2nd applicant dated the even date.

Analysis and Determination

8. I have considered the application, the statutory statement, verifying affidavit and the annexures thereto. The only issue for determination is whether the orders sought are merited.
9. Under Order 53 Rule 1(1) of the Civil Procedure Rules, no application for judicial review shall be made unless leave of the court has been obtained. The purpose of leave is to: filter out frivolous or unmeritorious claims at an early stage; ensure that only serious cases proceed to full hearing; confirm



that the applicant has established a prima facie case of arguable merit; and prevent abuse of judicial review jurisdiction.

10. In *R v County Council of Kwale & Another ex parte Kondo & 57 Others* [1998] 1 KLR (E&L), it was held that:

“Leave is designed to eliminate at an early stage any applications for judicial review which are frivolous, vexatious or hopeless and to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration.”

11. On the material presented, I am satisfied that the applicants have raised an arguable case, particularly regarding the scope and limits of the DCI’s statutory mandate, which is circumscribed under the *National Police Service Act* and *the Constitution*.

12. The allegations that the DCI has acted in furtherance of a private civil debt recovery, without disclosing any criminal offence or ongoing criminal investigation, raise substantial questions as to the procedural fairness and right to property under Article 47 and 40 of *the Constitution* and whether the impounding amounted to an abuse of police powers.

13. I am also persuaded that the applicants’ claim is not merely academic or speculative. They have annexed documentary evidence, including proof of vehicle ownership and correspondence relating to the impounding. The urgency and sensitivity of the matter, especially the risk of sale or disposal of the motor vehicle, justifies invocation of the judicial review jurisdiction.

14. As regards the prayer that leave do operate as a stay of any intended sale or interference with the vehicle, the same is necessary to preserve the substratum of the dispute.

15. Accordingly, the application dated 13th June, 2025 is hereby allowed in the following terms:

- a. Leave is hereby granted to the applicants to apply for orders of certiorari, mandamus, and prohibition as prayed in prayers 2 (a),(b) (c) and (e).
- b. (b) The leave so granted shall operate as a stay of the sale, disposal, or any form of interference with motor vehicle registration number KDQ 147E Honda Vezel Station Wagon, pending the hearing and determination of the substantive motion.
- c. The substantive Notice of Motion shall be filed and served within 21 days from the date hereof in a fresh judicial review file.
- d. Costs if any, shall be in the main motion.
- e. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE

